

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

**Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

FILE NO.: CDUA OA-3397
REF: OCCL: MC
Acceptance Date: January 4, 2007
180 Exp. Date: July 3, 2007

March 9, 2007

REGARDING: CDUA OA-3397: After-the Fact Permit for Boat Ramp

APPLICANT: Richard Pohle
44-007 `Aina Moi Place, Kāne`ohe, HI 96744

LANDOWNER: Richard Pohle

LOCATION: Mōkapu, Kāne`ohe, Ko`olaupoko, O`ahu

TMK: offshore of (1) 4-4-21:23, 37 (submerged lands)

AREA OF USE: 1000 square feet

SUBZONE: Resource

DESCRIPTION OF AREA AND CURRENT USE:

The project site is located in submerged lands offshore of `Aina Moi Place in Kāne`ohe, TMK (1) 4-4-21:23. `Aina Moi Place and Malae Place form a small residential subdivision south of the Mōkapu Peninsula and the Kāne`ohe Bay Marine Corps Base. It is bounded by Kāne`ohe Bay to the west and Kāne`ohe Bay Drive to the east. The residential area is not in the State Land Use Conservation District. **Exhibit 1** shows the TMK map of the neighborhood, while **Exhibit 2** shows a Google Earth map of the same neighborhood.

The lands immediately offshore are composed of shallow mudflats that lie partially exposed at low tide. The mudflats are composed of dirt, sand, and rock. In 1939 the Territory of Hawai'i and the Corps of Engineers issued permits to Kāne`ohe Ranch to dredge a small channel running along the coast just offshore of the neighborhood. The 4000' channel ran from Kāne`ohe Bay Yacht Club to Nu`upia Pone, allowing small boats to traverse the area and to connect with a larger boat channel to the north. In 1951 Kāne`ohe Ranch re-dredged a 2000' by 120' by 6' section of the channel. In 1971 or 1972 the State of Hawai'i conducted further maintenance dredging of the channel. The channel has not been maintained since, and has subsequently filled up with sedimentation.

The shoreline in the area has been heavily modified by urban development. Aerial photos reveal a mixture of seawalls, eroded areas, and small boat piers. 44-007 'Āina Moi is fronted by a three foot drop. There is a three foot difference between high and low tides, and there is little wave action under normal conditions.

PROPOSED USE:

The applicant is seeking an after-the-fact permit for a small boat ramp on his property. The existence of the un-permitted boat ramp on parcel 23 [applicant's property] came to light during the applicant's earlier proposal to conduct maintenance dredging. The ramp was found to be in violation of Conservation District rules (Enforcement Case OA-07-14). The case was handled through the Hearing Officer/Administrative Procedure System (HOAPS). The subject case was processed and disposed of on November 29, 2006. This permit will satisfy the second of the conditions for resolving the violation.

The ramp was built by one of the Pohle's tenants approximately fifteen to twenty years ago. The applicant is unsure of the exact date, as they were living off-island when the tenant put it in. Neither Land Division nor OCCL have any permits on file for the ramp.

The ramp consists of two parallel cement slabs running from parcel 23 onto the mudflats. The ramp is approximately 25 feet long, 11 feet wide, and five inches thick. The ramp slope is approximately ten degrees. At high tide the ramp is mostly submerged, with only the upper ten feet exposed. At low tide the ramp is completely exposed. **Exhibit 3** contains photographs of the ramp at high and low tides.

Staff consulted with OCCL coastal geologists, who believe that - given the urbanized nature of the area and the heavy level of sedimentation in the immediate area - it is unlikely that the ramp has a significant impact on coastal processes.

SUMMARY OF COMMENTS:

The application was referred to the following agencies for their review and comment: the State: Department of Land and Natural Resources (DLNR) - O'ahu District Land Office, Division of Aquatic Resources, Historic Preservation, and Division of Boating and Ocean Recreation; the Kāne'ohe Neighborhood Board; the Office of Hawaiian Affairs; the Honolulu County Department of Planning and Permitting; and the Department of Health Office of Environmental Quality Control.

A notice of the project was placed in the January 23, 2007 edition of the Office of Environmental Quality Control's *Environmental Notice*. A copy of the proposal was also made available to the public at the Kāne'ohe Regional Library.

Comments were received from the following agencies and are summarized as follows:

DLNR Division of Boating and Ocean Recreation

No comments.

DLNR Land Division

The Division noted that the applicant will need to process an application with Land Division for review and approval of a boat ramp easement.

DLNR Division of Aquatic Resources

No comments.

DLNR Division of Boating and Ocean Recreation

No comments.

ANALYSIS:

After reviewing the application, OCCL found that:

1. The boat ramp was an identified use within the Conservation District according to Hawaii Administrative Rules (HAR), §13-5-24 *Identified land uses in the resource subzone*; R-6 MARINE CONSTRUCTION, (D-1). **This use requires a permit from the Board of Land and Natural Resources (BLNR).** The final decision as to whether to grant or deny the permit lies with the BLNR.
2. A public hearing pursuant to HAR §13-5-40 was not required
3. Given that there are already over 200 piers and boat ramps currently lining the Bay, OCCL found that the boat ramp resulted in minor alteration in the conditions of the land and water. This project was therefore exempt from conducting an Environmental Assessment pursuant to HAR §11-200-8 *Exempt Classes of Action, 3: Construction and location of single, new, small facilities or structures.*

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, Hawaii Administrative Rules (HAR).

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The purpose of the Conservation district is to regulate land uses for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

Piers and ramps have been established at Kāneʻohe Bay for over a hundred years. Staff believes that the proposed use is a good use of the natural resources of the Bay.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area. Kāneʻohe Bay has already been significantly altered with seawalls, channels, dredging, small inlets, piers, jetties, and

boat harbors. Staff believes the boat ramp is minor in scope, and is consistent with the historical and current uses of the Bay.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Chapter 205A, HRS encompasses most land, water and marine areas of the State. Section 205A-2 (a) (5) (a) states that it is a policy of the Coastal Zone Management, to provide public or private facilities and improvements important to the State's economy in suitable locations. The maintenance dredging and boat ramp are consistent with these guidelines.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Kāne'ohe Bay is not actively sought out for beach recreation. Kāne'ohe Bay has already been significantly altered and there are approximately 200 piers and other structures along the Bay. Staff does not believe that the ramp has had a significant effect on the area's natural resources.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The boat ramp on the property is smaller in size and scope than neighboring piers.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Due to the urbanization of the area, staff does not believe that the ramp results in a significant visual or environmental impact.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

It is staff's opinion that the proposed project will not be detrimental to the public health, safety and welfare.

DISCUSSION:

As stated previously, the Kāne'ohe Bay shoreline has been extensively altered. There are approximately 200 piers and many boat ramps along the Bay. The proposed ramp is similar in design, size, and construction with other ramps in the neighborhood.

The Kāneʻohe Bay area is suited for boating and fishing as the bay bottom is silty and rocky and there is no sandy beach. Within the immediate area of the subject parcel, there is no public access to the shoreline except by boat. The ramp will improve boating access for the residents of the immediate neighborhood. For the general public, recreational activities such as fishing, boating, and crabbing will not be affected by the proposed actions.

Therefore, staff is recommending

RECOMMENDATION:

Based on the preceding analysis, staff therefore recommends that the Board of Land and Natural Resources APPROVE this application for a boat ramp at 44-007 ʻĀina Moi Place in Kāneʻohe, TMKs (1) 4-4-21:23, subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawaiʻi Administrative Rules;
- 2) The applicant, their successors and assigns, shall indemnify and hold the State of Hawaiʻi harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, their successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules;
- 4) All mitigation measures set forth in the application materials are hereby incorporated as conditions of the permit;
- 5) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 6) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 7) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaiʻi, and by Hawaiʻi statutory and case law;
- 8) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;

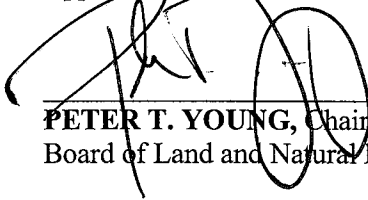
- 9) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 10) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 11) The applicant shall process an application with Land Division for review and approval of a boat ramp easement;
- 12) The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as a part of a deed instrument;
- 13) Other terms and conditions as may be prescribed by the Chairperson; and
- 14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

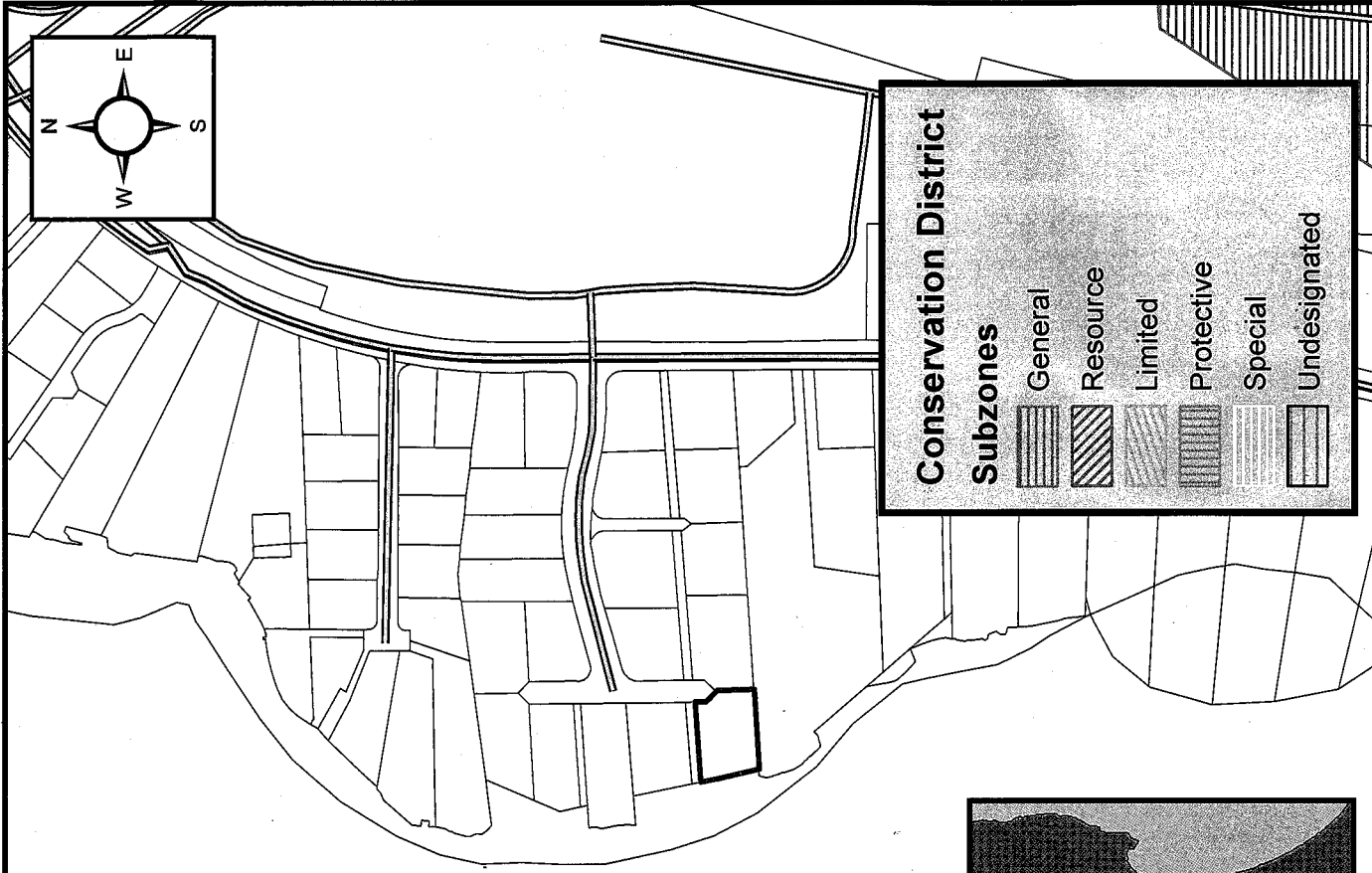
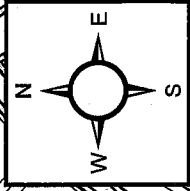


Michael Cain
Staff Planner

Approved for Submittal:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources



Conservation District	
Subzones	
General	
Resource	
Limited	
Protective	
Special	
Undesignated	

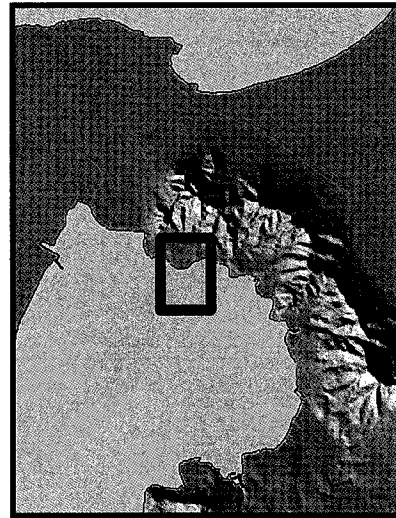




EXHIBIT 2

ATTACHMENT B



Side View of Ramp With
House in Background
44-007 Aina Moi Place

Side View of Ramp at Low
Tide (0.8 feet)



11' x 25' Ramp at High Tide
(2.8'). Highest Tide is ~1
foot higher.